THE HON'BLE MR JUSTICE V.V.S.RAO

WRIT PETITION No.21351 of 2005

30.9.2005

Between:

Pasula Suresh, S/o.Laxmi Rajam, R/o.R.Basti,

Bellampalli Municipality, Adilabad District.

… Petitioner

AND

1. State Election Commission, Budha Bhavan, Secunderabad.

And others

… Respondents

ORDER:

The petitioner is resident of Bellampalli Town, Adilabad District. In the just completed Municipal Elections 2005, he has unsuccessfully contested for Member, Ward No.15 of Bellampalli Municipality. In the next stage of municipal elections, the election for choosing a Chairperson of Municipality is scheduled at 1.00 p.m. today i.e., on 30.9.2005. The petitioner filed the present writ petition seeking a direction restraining the third respondent from contesting the election as Chairperson. According to the petitioner, the third respondent was charge sheeted in Crime No.51 of 2002 i.e., C.C.No.509 of 2003 for offences involving criminal turpitude, attracting punishment of 2 to 8 years of sentence of imprisonment for a charge under Section 420 of Indian Penal Code, 1860. Therefore, the petitioner contends that the third respondent is disqualified for being chosen/elected as a Member and for contesting the election as Chairperson.

Learned Counsel for the petitioner, Sri K.Govind, placed strong reliance on sub-rule (9) of Rule 8 of A.P. Municipalities (Conduct of Election of Members) Rules 2005, which requires that every candidate has to file declaration along with nomination with regard to criminal antecedents. He submits that the third respondent intentionally suppressed the factum of pending of criminal case against him and though the petitioner raised objections, at the time of scrutiny of nominations, those objections were not considered.

It is no axiomatic that the election process cannot ordinarily be interdicted in proceedings under Article 226 of Constitution of India. That is the purport of Article 243ZG of Constitution of India. Further, as per Rule 10(C) of Rules for Decision of Election Disputes, 1967, improper rejection or improper acceptance of a nomination is a ground for challenging the election of the third respondent. The petitioner has not availed the remedy and therefore, he cannot maintain the writ petition.

In **V.Narayana v. Election Officer, Alwal Municipality** (**Narayana**, for brevity), this Court has held that when a nomination is rejected, a writ petition would not lie. It was held therein that challenge to election means and includes a challenge to any intermediary stage in the election and that when the nomination is rejected or accepted improperly, the same has to be agitated by way of Election Petition. The decision in **Narayana** was followed by Full Benches of this Court in **A.P.Sarpanchas Association v Govt. of A.P.** and **G.Kanaka Durga v State Election Commissioner**. Further in **C.Subrahmanyam v K.Ramanjaneyulu**, the Supreme Court held that even if the election is challenged on the ground of non-compliance of the provisions of the A.P. Panchayat Raj Act, 1994 or Conduct of Election Rules, the writ petition would not be maintainable and it is only by way of Election Petition that such thing can be challenged. In view of the settled position, this writ petition is not maintainable.

If so advised, it shall be open to the petitioner to challenge the election of the third respondent before the jurisdictional Election Tribunal raising all grounds. In such an event, the learned Tribunal shall dispose of the Election Petition without reference to observations herein within a period of three months from the date of presentation of Election Petition, after serving notice to the contesting respondents therein.

The writ petition is, accordingly, dismissed. No costs.

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(**V.V.S.RAO,J**)

September 30, 2005.

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